The term "vested right" often appears to be used in a broader sense than the terms "property" and "estate." For example an inchoate right of dower is said to be neither property nor a vested right. *Lucas v. Sawyer* (1864) 17 Iowa, 517; see 19 L. R. A. 256, note. But, immediately upon the husband's death the widow has a vested right (power) protected under the federal Constitution from legislative control. *Bunker v. Barron* (1859) 8 Iowa, 132. Before assignment, however, it is still inalienable at law as property though assignable in equity. *Huston v. Seeley* (1869) 27 Iowa, 183, 198. Her interest is a mere power to demand assignment, and, until she exercises this power, she has no "property" right at law. *Rausch v. Moore* (1878) 48 Iowa, 611; 1 Washburn, *Real Property* (6th ed. 1902) 257. A power of re-entry, reserved by the grantor of a fee on condition, though inalienable at common law, has been called a vested right, protecting the grantor's heir-at-law from the retroactive effect of a statute making it devisable and alienable, but no distinction was made as to whether the alleged breach of condition occurred before or after the death of the grantor. See *Southard v. Central Ry.* (1856, Sup. Ct.) 26 N. J. L. 13. The interest of a contingent remainderman, though not at common law an alienable property interest, has been called a vested right. See *Aetna Life Ins. Co. v. Hoppin* (1914, C. C. A. 7th) 214 Fed. 928. But in Oregon it is held that contingent remainders are mere expectancies and until they actually vest are subject to legislative control. *Lee v. Albro* (1919) 91 Ore. 211, 178 Pac. 784. In the instant case the fee simple acquired by the school district through purchase was made defeasible by the statute upon the concurrence of two contingencies: two years' non-user for school purposes, and the exercise of the power of repurchase by the beneficiary. The beneficiary, not being the grantor but the owner of the tract from which the school site was taken, did not have a power of re-entry nor a possibility of reverter but merely a statutory option to purchase certain land on certain conditions. *Waddell v. Board of Directors* (1919, Iowa) 175 N. W. 65. The condition upon which it might be exercised not having occurred, it is submitted that he was deprived of no vested right by the amendment. This conclusion seems unimpeachable in view of the fact that the statute did not exist at the time the conveyance was made, and so did not enter into the original contract. As to the extent to which existing statutes and decisions enter into contracts and become subject to the constitutional provision against impairment of contract obligations, see Willoughby, *Constitutional Law* (1910) secs. 518-19; Dodd, *Impairment of the Obligation of Contract by State Judicial Decisions* (1909) 4 ILL. L. REV. 155, 327.

CONTRACTS—DURESS—THREATS TO INJURE THIRD PARTIES.—In an action to recover the balance due upon certain promissory notes, the defendant set up the defence of duress and entered a counterclaim for the money already paid, based on the fact that the notes were obtained from him by threatening to arrest his brother-in-law for criminally appropriating funds of the plaintiff bank. The plaintiff demurred to the counterclaim. *Held,* that money paid to compound a felony could not be recovered, Greenbaum, J., basing his decision on the fact that threats to prosecute a brother-in-law did not constitute duress. *Union Exchange National Bank v. Joseph* (1920) 194 App. Div. 295, 185 N. Y. Supp. 403.

Duress is a good defence to an action upon a contract because a party is privileged not to perform an agreement which he did not enter into voluntarily; i. e., he is under no duty, but has a power to create one by ratification. See Joyce, *Defenses to Commercial Paper* (1907) sec. 105; see NOTES (1913) 26 HARV. L. REV. 255. In early times the legal standard applicable to ascertain the fact of duress was the resisting power of a man of courage. See 1 Blackstone, *Commentaries,* 130; 1 Chitty, *Bills of Exchange* (11th ed. 1878) 61; 3 Williston, *Contracts* (1920) sec. 1601. Later the standard was changed to that of a person

of ordinary firmness. Chitty, *Contracts* (11th ed. 1874) 272 (where the text recognizes the possibility that a battery may constitute duress); *United States v. Huckabee* (1872, U. S.) 16 Wall. 414, 432; *Ortt v. Schwartz* (1916) 62 Pa. Super. Ct. 70. This, in turn, in some jurisdictions has been extended from an extrinsic standard to an individual one, depending on the character and power of resistance of the person seeking relief. See Joyce, *loc. cit.;* 3 Williston, *op. cit.,* sec. 1603; see NOTES (1913) 1 VA. L. REV. 481, 483; *Galusha v. Sherman* (1900) 105 Wis. 263, 81 N. W. 495. In general, threats against a wife, husband, parent, or child have been held to constitute duress. *Rostad v. Thorsen* (1917) 83 Ore. 489, 163 Pac. 423; *Spoerer v. Wehland* (1917) 130 Md. 226, 100 Atl. 287; see L. R. A. 1915D, 1120, note. In the more liberal jurisdiction threats against other relatives have been held sufficient. *Fountain v. Bigham* (1912) 235 Pa. 35, 84 Atl. 131 (son-in-law); *Sharon v. Gager* (1878) 46 Conn. 189 (nephew); *Davies v. London & P. Marine Ins. Co.* (1878) L. R. 8 Ch. Div. 469 (friend); 26 L. R. A. 64, note. The modern tendency seems to be toward the individual standard. See NOTES (1920) 20 COL. L. REV. 80. Statutes govern duress in some states now. *Pendleton v. Greever* (1920, Okla.) 193 Pac. 885; *Merchant's Collection Agency v. Roantree* (1918) 37 Calif. App. 88, 173 Pac. 600. Applying the individual standard, blood ties and relationship should have no operative effect of themselves. See 3 Williston, *op. cit.,* sec. 1621. Wherever duress has actually been found to exist, the courts appear to have granted relief irrespective of any relationship of the parties. Therefore, it would seem that the dissenting opinion in the principal case is in accord with the better and more liberal rule.

CONTRACTS—USAGE AND CUSTOM—WHEN ADMISSIBLE AS PART OF CONTRACT.—The plaintiff contracted to sell to the defendant, a wholesale dealer, 50,000 tons of coal to be shipped in equal monthly instalments, for twelve months beginning December 30, 1915. The amount of coal called for per month was never actually delivered, but the defendant paid for what he got. During the period September-November the plaintiff delivered 8,400 tons, but the defendant refused to pay for a substantial part of it. In an action for goods sold and delivered the defendant set up a counterclaim for damages for breach of contract during September-November, whereupon the plaintiff pleaded a usage, that where cars were not available for the full amount of coal contracted for, the coal would be apportioned pro rata among the vendees. Evidence was admitted to prove the usage, to which the defendant excepted. *Held,* that evidence of the usage as part of the contract was admissible. *Nicoll v. Pittsvein Coal Co.* (1920, C. C. A. 2d) 269 Fed. 968.

In the instant case no question as to the existence, reasonableness, legality, or other necessary elements of the usage is involved. See 2 Williston, *Contracts,* (1920) secs. 657-661; 27 R. C. L. 154-168. Nor is the usage offered to interpret the language of the agreement. See 2 Williston, *op. cit.,* sec. 650; 4 Wigmore, *Evidence* (1905) sec. 2464. But if admissible, the facts of the usage are added to and become part of the agreement itself. The general way of expressing the rule is that where the usage varies or contradicts the written terms of the instrument, it is not admissible. *United Steel & Metal Corp. v. Catevenis* (1920, App. Div.) 182 N. Y. Supp. 879; *Guild v. Sampson* (1919) 232 Mass. 509, 122 N. E. 712. This is fallacious, because any usage if admitted is bound to vary the writing. The principal case applies what seems to be the better test, namely, whether or not the parties intended to include the usage. *Humfrey v. Dale* (1857, Q. B.) 7 El. & Bl. 266, 274; see 4 Wigmore, *op. cit.,* secs. 2430, 2440; 2 Williston, *op. cit.* secs. 651-652. The presumption is that unless it is specifically excepted, both parties contracted with reference to it. *Lillard v. Ky. Distilleries & Warehouses* (1904, C. C. A. 6th) 134 Fed. 168; see 2 Williston, *op. cit.,* sec. 656. But the usage is not admissible if, when it is included in the agreement, it would be